

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

March 29, 2010

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH WAYNE STIGER,

Defendant - Appellant.

No. 10-5011

(D.C. No. 4:09-CV-0194-CVE)

(D.C. No. 4:00-CR-00126-CVE-7)

(N.D. Okla.)

ORDER

Before **MURPHY, O'BRIEN**, and **GORSUCH**, Circuit Judges.

Judgment was entered on Kenneth Wayne Stiger's § 2255 motion on November 19, 2009. A notice of appeal was due within 60 days following the entry of judgment. Fed. R. App. P. 4(a)(1)(B). The 60th day after November 19, 2009 was January 18, 2010, which was a federal holiday, making the notice of appeal due on January 19, 2010 by operation of Fed. R. App. P. 26(a)(1)(C). In this case, the notice of appeal was not filed in the district court until February 5, 2010, making it 17 days late.

The court permitted Mr. Stiger to show cause why the appeal should not be dismissed for lack of appellate jurisdiction. Mr. Stiger suggests initially that weekends and holidays should not be counted in computing the 60-day deadline, but that rule only applies when the time period for the deadline is less than 11 days. See Fed. R. Civ. P.

6(a)(2); Fed. R. Crim. P. 45(a)(2); Fed. R. App. P. 26(a)(2) (2009 versions).

He further argues that he should not be obligated to file a notice of appeal until after the district court acts on his request for a certificate of appealability. Mr. Stiger cites no authority in support of this proposition, nor could he. The Supreme Court has expressly held that the timely filing of a notice of appeal is a prerequisite to this court's exercise of jurisdiction in a case of this nature. Bowles v. Russell, 551 U.S. 205, 205-06 (2007). The time for filing a notice of appeal is based on the date "the judgment or order appealed from is entered." Fed. R. App. P. 4(a)(1)(B).

For the foregoing reasons, this appeal is dismissed.

Entered for the Court
ELISABETH A. SHUMAKER
Clerk of Court

A handwritten signature in dark ink, appearing to read "Douglas E. Cressler", written in a cursive style.

by:
Douglas E. Cressler
Chief Deputy Clerk